IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.R.UDAYABHANU

TUESDAY, THE 24TH JULY 2007 / 2ND SRAVANA 1929

CRL.A.No. 236 of 1999(C)

SC.157/1996 of I ADDL. SESSIONS COURT, KOLLAM
CP.8/1996 of JUDL.MAGISTRATE OF FIRST CLASS, KARUNAGAPPALLY
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APPELLANT: ACCUSED NO.1

RAMACHANDRAN, S/O.MADHAVAN,
KOLAPPALLY PADETTATHIL,
KADATHOOR MURI,
KULASEKHARAPURAM VILLAGE

BY ADV. SRI.K.SUBASH CHANDRA BOSE
SRI.V.PREMCHAND

RESPONDENT: COMPLAINANT

STATE OF KERALA, REP.BY
THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.AMJAD ALI

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 24/07/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

CRL.A. NO.236/1999

ORDER ON CRL.MP. NO.1047/1999 IN CRL.MP. NO.236/1999

DISMISSED

24.07.2007 **SD/- K.R.UDAYABHANU, JUDGE**

/TRUE COPY/

P.S. TO JUDGE

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K.R. UDAYABHANU, J.

CRL.A NO.236 of 1999

Dated this the 24th day of July, 2007

ORDER

The appellant who is the Ist accused stands convicted for the offence under section 489 B and 489 C of the IPC and sentenced to undergo R.I for 5 years and to pay a fine of Rs.10,000/- and in default to undergo simple imprisonment for two years for the offence under section 489B and is also sentenced to undergo R.I for 5 years for the offence under section 489 C IPC. The substantive sentences of imprisonment shall run concurrently.

2. The prosecution case is that on 9-1-90 at about 11.00, near the railway gate at Kadathoor in Kulasekharapuram, the appellant along with A2 and A3 were arrested while travelling in an autorickshaw and 88 numbers of denomination 10 and 6 numbers of denomination 20 of currency notes were found in possession of A1. Subsequently on the basis of the confession statement of A1, 299 numbers of currency

notes of denomination 10 and 135 numbers of denomination of 20 were seized from the residence of A1 situated at Venattukada veedu.

3. The evidence adduced in the matter consisted of the testimony of PWs.1 to M.Os. 1 to 6 and Exts.P1 to P5. And M.Os 1 to 5. The evidence as to the detection on 9-1-90 consisted of the testimony of PWs 1,2, 4 and 5. PW1, the witness to the seizure mahazar from the auto driver did not support the prosecution. PW-4, the Panchayat member who is also a signatory to Ext.P1 recovery mahazar has supported the prosecution. PW-5 is the S.I who arrested the accused and recovered the fake currency notes as per Ext.P1 recovery mahazar.

4. The Trial court did not treat the subsequent recovery as effected under section 27 of the Evidence Act as it was found that other persons are also residing in the particular house. But the conduct of A1 was taken as a relevant piece of evidence under section 8 of the Evidence

Act. The recovered currency notes were found to be counterfeit as per Ext.P5 expert opinion.

5. It is contended by the counsel for the appellant that the offence under section 489 B will not be attracted on the ground that there is no allegation that the accused tried to make use of the counterfeit notes as genuine. Hence I find that only offence under section 489 C will be attracted. The contention based on the decision in **Umashanker v. State of Chhattisgarh** (2001(3) KLT 681(SC) that there should be material to prove mens rea, I find, cannot as such applies to the facts of the instant case. In the above cited decision the appellant was a student aged 18 years. Further more, in the instant case, bulk quantity of contraband was seized from the possession of A1. Mens rea in the instant case can be inferred for the conduct of possession by A1 for having bulk quantity of counterfeit notes. I find that the decision of the court below is supported by proper reasons with respect to offence under

section 489C IPC. In the circumstances, the conviction for the offence under 489B is set aside and for the offence under section 489C is affirmed.

6. Counsel for the appellant has pleaded for leniency pointing out that more than 17 years have elapsed since the commencement of the proceedings and that he has been facing the ordeal of the criminal proceedings so long. It is also contended that he has been in custody for about more than 1 1/2 years. I find that the accused was in custody from 9-1-90 to 14-7-90 and further from 29-5-98 to 15-5-99.

In the circumstances, the sentence imposed is modified to the sentence already undergone. The appeal is disposed of accordingly.

K.R.UDAYABHANU, JUDGE.

Kvm/-

K.R.UDAYABHANU, J.

CRL.A. 236 OF 1999

JUDGMENT

24-7-2007.